IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11971 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GOPALSINH BHOLUSINH RATHOD

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 11971 of 2004

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

MS HANSA B PUNANI AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 14/02/2005

ORAL JUDGEMENT

1. This Special Civil Application under Article 226

of the Constitution of India has been filed by the petitioner challenging his detention in pursuance of the order passed against him by the District Magistrate, Panchmahals at Godhra, on 31st of August, 2004, in exercise of powers conferred upon him under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA Act for short). The petitioner is under detention as bootlegger from 01st of September, 2004 in pursuance of the above order.

2. The grounds of detention as placed on record reveal that the detaining authority took into consideration two types of materials to arrive at the subjective satisfaction. Firstly, the detaining authority took into consideration three criminal cases came to be registered against the petitioner, two before the Prohibition Police Station at Godhra, and third before Halol Police Station, on 22nd of July, 2003, 13th of February, 2004 and on 30th of April, 2004. The petitioner was released on bail in all the three cases and on 30th of April, 2004 in the last case. It was alleged that the petitioner was in possession of bulk of prohibited liquor and, therefore, the cases came to be filed against the petitioner under Sections 66-B, 65-E of the Bombay Prohibition Act. The detaining authority also relied upon two in-camera statements as recorded by the Sponsoring authority on 8th of July, 2004 and verified by the detaining authority on 17th of August, 2004. The first witness referred to the incident occurred before 20 days of 8th of July, 2004, the date of recording his statements wherein it was alleged that the petitioner forced the witness to conceal bulk of prohibited foreign liquor in the house of the witness. On refusal, the witness was beaten, and due to fear, he did not report the incident to the police. While second witness referred to the incident occurred before two and half months of the recording of the statement of the witness i.e. on 8th of July, 2004, wherein it was alleged that on suspicion that the witness was providing information to the police about the illegal activities of the petitioner, the witness came to be beaten by the petitioner and his accomplice. On account of fear of the petitioner, this witness also did not report the incident to the police.

3. From the above material, the detaining authority came to the conclusion that the petitioner was engaged in the activities of storing, selling and transporting the prohibited liquor. The activities of the petitioner, in view of the detaining authority, were prejudicial to the maintenance of public order and adversely affecting the

public health. The detaining authority also reached to the subjective satisfaction that the activities of the petitioner are required to be prevented forthwith. The detaining authority, therefore, after considering other measures, which may be taken against the petitioner under general law, came to the conclusion that there was no other alternative except to pass the order of detention against the petitioner under the PASA Act. The detaining authority therefore passed the order of detention against the petitioner, which is under challenge in this petition.

4. Learned Advocate Mr. MR Prajapati for the petitioner and learned AGP Ms.Hansa B Punani for the respondents were heard at length.

5. Out of various grounds urged on behalf of the petitioner and opposed and controverted by learned AGP, it appears that this petition can be examined and disposed of on the ground that the order of detention is whether vitiated on the ground of delay in passing the order by the detaining authority.

6. The factual data revealed that the last offence against the petitioner came to be registered on 30th of April, 2004 and he was released on bail on the same day. The sponsoring authority recorded the statements of the witnesses i.e. collected the material on 8th of July, 2004. The witnesses referred the incidents occurred about two months back of recording of the statements. The proposal to the detaining authority was forwarded on 17th of July, 2004. The detaining authority verified the in-camera statement on 17th of August, 2004 and the order came to be passed on 31st of August, 2004. If 30th of April, 2004 is taken as the date on which such offence came to be registered against the petitioner and he was released on bail, the order came to be passed only on 31st of August, 2004 after delay of four months.

7. The present set of facts are covered by a decision of this Court in the matter of ELESH NANDUBHAI PATEL vs. COMMISSIONER OF POLICE, AHMEDABAD CITY, as reported in 1997 (1) G.L.H. 381, wherein as per the facts of that case, the last offence against the said detenu came to be registered on May 20, 1996, and order came to be passed on 5th of November, 1996. In the said case, two incidents occurred on 2nd of October and 10th of October, 1996 were taken into consideration by the detaining authority. After relying upon a decision of the Apex Court in the matter of PRADEEP NILKANTH vs. S. RAMAMURTHY, 1993 (2) Suppl. SCC 61, this Court came to

the conclusion that there was long gap between the occurrence and the order of detention. The unexplained delay in passing the order after gap of five months was held vitiating the order of detention. The Court also observed that two unregistered incidents were taken into consideration by the detaining authority to cover up the long gap.

8. In the present case, the delay is of four months in passing the order of detention. The factual data reveals that the proposal was sent to the detaining authority on 17th of July, 2004, the detaining authority verified the in-camera statements only on 17th of August, 2004, and order came to be passed on 31st of August, 2004. It appears that with a view to cover up the gap or to give life to stale cases, after three months, the sponsoring authority recorded the statements of the witnesses referring to the incidents much earlier to the recording of the statements. Thereafter also there is delay in verifying the record and reaching to the subjective satisfaction by the detaining authority. The proximity of the alleged activities with passing of the order of detention is snapped by such unexplained delay. Therefore, the order under challange is required to be quashed and set aside on this ground alone.

9. In the result, the petition is allowed. The order passed by the District Magistrate, Panchmahals at Godhra, on 31st of August, 2004, against the petitioner in exercise of powers under Section 3(1) of the PASA Act is hereby quashed and set aside. The detenu - Gopalsinh Bholsinh Rathod is hereby ordered to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule made absolute. DS permitted.

(J.R. Vora, J.)

p.n.nair